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No.

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE

# SUPREME COURT OF THE UNITED STATES

1987 TERM

DeWEESE NELSON REALTY, INC. ..... Appellant

v.

EQUITY SERVICES CO. &
BEEMAN INVESTMENT CO. ..... Appellees

# JURISDICTIONAL STATEMENT

WILLIAM P. FEATHERSTON, JR.
105 North State Street
Jackson, Mississippi 39201
(601) 353-2725
*Attorney for Appellant*

## QUESTION PRESENTED

Whether the Mississippi Tax Sale Statute, specifically, Mississippi Code §27-41-55 is violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution because that statute only provides for notice by posting and publication to an owner of property of a pending tax sale.

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## JURISDICTION AND OPINIONS BELOW

The opinion of the Mississippi Supreme Court from which Deweese Nelson Realty, Inc. appeals appears in the appendix hereto, pp. 20-36, infra, and is not yet reported.

The final decree of confirmation of title which confirmed two tax deeds in favor of Appellee Beeman Investment Company was entered on August 2, 1984. Thereafter, Appellant perfected an appeal to the Mississippi Supreme Court, which affirmed the trial court's decree. Appellant filed a Petition for Rehearing before the Mississippi Supreme Court on October 29, 1986, which was denied on February 25, 1987.

Appellant timely filed an Amended Notice of Appeal to the United States Supreme Court with the clerk of the Mississippi Supreme Court on April 21, 1987.

This appeal is being docketed in this Court within ninety (90) days from the denial of Appellant's Petition for Rehearing by the Mississippi Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2); §2101(c); §2104.

## UNITED STATES CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment: (Due Process) §1:

> . . . No state shall abridge the privileges or immunities of citizens of the Unites States; nor shall any state deprive any person of life, liberty, or property, without due process of law; . . .

## APPLICABLE STATUTES

The most germane statutory provisions applicable to this appeal and contained in the Mississippi Tax Sale Statutes are cited below in pertinent part:

Mississippi Code §27-41-55:

After the fifteenth day of February and after the fifteenth day of August in each year hereafter, the tax collector shall advertise all lands in his county on which all the taxes due and in arrears have not been paid, as provided by law, as well as all land which is liable to sale for the other taxes which have matured, as required by law, for sale at the door of the courthouse of his county, or any place within the courthouse that the tax collector deems suitable to hold such sale, provided that the place of such sale shall be designated by the tax collector in the advertisement of the notice of tax sale, on the first Monday of April and the third Monday of September following, as the case may be. Such advertisement shall be inserted for three (3) weeks in some newspaper published in the county, if there be one, but in counties having two (2) court districts the lands shall be advertised and sold in the district in which such lands are situated and put up at the courthouse door thereof, and shall contain a list of the lands to be sold in numerical order as they are contained in the assessment roll, in substance as follows:

Name of/ Division of/ Section
Owner/ Section/

Town-/ Range/ State/ County
ship/ Tax/ Tax

Total Tax

or by such other description as it may be assessed. Land in cities and towns shall be described in the advertisement as it is described on the assessment roll.

Mississippi Code §21-33-63 makes the method for sale of real estate for taxes by the state and county applicable to municipalities.

> Sales for the nonpayment of municipal taxes, both ad valorem and for special improvements, shall be made by the tax collector at such place, within the corporate limits, as the governing authorities may direct. The sale of real estate for ad valorem taxes and special improvement assessments and sale of personal property shall be made upon the same notice, at the same time, and in the same manner as provided by law for sales of like property for unpaid state and county taxes.
>
> The lists of lands sold for taxes by the municipality shall be made as required to be made by the state and county collector, and shall be

filed with the municipal clerk within twenty days after the tax sale, and shall there remain, subject to redemption for the same length of time and in the same manner as prescribed for the redemption of lands sold for state and county taxes, with the same saving to infants and persons of unsound mind. Said lists shall have the same force and effect, and confer the same right and entitle the purchasers to the same remedies, as lists made for delinquent taxes by the state and county tax collector. Such title shall be subservient, however, to a title acquired under a sale for state and county taxes.

One copy of the list of land so sold shall be filed within thirty days of such sale with the chancery clerk of the county in which said municipality is located, and the chancery clerk shall file and index said list among the land records of his county, as other tax sales are listed. However, the failure of the clerk so to file such list as herein prescribed shall not affect the validity of such tax sale.

## STATEMENT OF THE CASE

Deweese Nelson Realty, Inc. is a

small family corporation organized in the State of Mississippi for the purpose of holding and managing real estate.

On May 30, 1978, Deweese Nelson Realty, Inc. (hereinafter Deweese) purchased an undeveloped residential lot in a subdivision in Jackson, Mississippi. Deweese paid a cash downpayment and gave a mortgage to the seller to secure the balance of the purchase price in the amount of $19,525.

The 1978 City and County ad valorem taxes on the subject property were paid on a pro-rata basis by the seller and Deweese.

Deweese failed to pay the city and county ad valorem taxes on the property for the year 1979. As a result the property was sold by the city and county to Equity Services Company (hereinafter Equity) at a city tax sale on

April 7, 1980 and at a county tax sale on September 15, 1980.

Mississippi law does not require the city or county to send personal notice to the owner of the property prior to a tax sale and Deweese did not receive any notice. Mississippi law provides for only constructive notice of a tax sale to owners by posting at the courthouse and publication in a newspaper.[1]

Mississippi law does provide for personal notice to the owner of the right to redeem the property within the two year redemption period.[2]

The property was not redeemed within the 2 year redemption period and

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[1] Miss.Code §27-41-55

[2] Miss. Code §§ 27-43-1 and 27-43-3 The statute requires that the notice be served and mailed within 90 days and not less than 60 days prior to the expiration of the time of redemption.

city and county tax deeds were issued to Equity. Equity quit-claimed its interest in the subject property to Beeman Investment Company (hereinafter Beeman).

Deweese filed suit to set aside the tax deeds on the grounds that it had not received adequate prior notice of the tax sale; that it had not received the city redemption notice; and, that having received the county redemption notice prior to the expiration date, attempted to pay the taxes due but mistakenly paid only the taxes due for the current year and that, therefore, it was entitled to equitable redemption.

FEDERAL DUE PROCESS RAISED

The Appellant raised the United States Constitutional Due Process question presented by this appeal before the trial court.

The trial court rejected Deweese's constitutional arguments and confirmed the tax deeds in favor of Beeman. Appellant again raised the constitutional question of the lack of due process notice prior to the tax sale before the Mississippi Supreme Court and cited the cases of Mennonite Board of Missions vs. Adams [3] and Mullane vs. Central Hanover Bank & Trust Co.[4].

The Mississippi Supreme Court in an opinion decided on October 1, 1986, held that Deweese was not deprived of its property interests without due process of law and that it was unnecessary to address the merits of its constitutional issue. The basis of the court's holding was that the tax sale

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[3] (1983) 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180

[4] (1950) 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed.2d 865

statute [5] and the redemption notice statute[6] should be construed together.

The Mississippi Supreme Court further stated in its opinion that, "in the interest of refining our law, however, this Court suggests the Legislature consider the statutory procedure for notice of tax sales in light of developing United States Constitutional Law on Due Process. In this case it would be helpful for the Legislature to be apprised of Mennonite Board of Missions vs. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983).[7]

THE QUESTION PRESENTED IS SUBSTANTIAL

This case involves an interpretation of adequate notice under Due

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[5] Miss. Code §21-41-55
[6] Miss. Code §27-43-3
[7] Deweese Nelson Realty, Inc. vs. Equity Services Company and Beeman Investment Co., __ So.2d ____ (1986).

Process in a tax sale situation. Appellant has asserted that the Mennonite guidelines as applied to this case would render the Mississippi Tax Sale Statute unconstitutional.

Under Mississippi law notice to an owner of a tax sale is accomplished by posting at the courthouse for publication in a newspaper. This Court in Mennonite held that the Indiana Tax Sale Statute which provided for the same method of notice to a mortgagee was a violation of the Due Process Clause of the Fourteenth Amendment. This Court in addressing the issue of the notice of the right to redeem the property, held that the failure to give adequate notice of the tax sale proceeding deprived the mortgagee of due process of law and that, therefore, there was no need to reach the question of the right to notice of

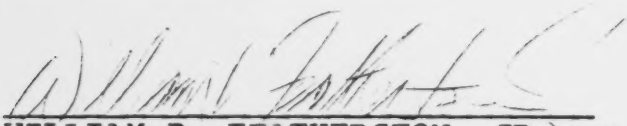
redemption before the County Auditor executes and delivers a deed to the tax-sale purchaser.

This appeal falls within the purview of the court's ruling in Mennonite. In fact, it is submitted that the defective notice in this case is even more egregious than the deficiency found in Mennonite. Mennonite involved the adequacy of notice of a tax sale by posting and publication to a mortgagee. The owner was statutorily entitled to notice of a tax sale by certified mail. Whereas in this case, the owner is only entitled to notice of the tax sale by posting and publication.

The Mississippi courts have failed to follow the holding of this Court in Mennonite and this case presents the opportunity to expound on its holding in Mennonite and its application to

the Mississippi Tax Sale Statute. For these foregoing reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,



WILLIAM P. FEATHERSTON, JR.

WILLIAM P. FEATHERSTON, JR.
Attorney at Law
105 North State Street
Jackson, Mississippi 39201
(601) 353-2725
ATTORNEY FOR APPELLANT

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

DEWEESE NELSON REALTY, INC. PLAINTIFF

VS. NO. 123,589

EQUITY SERVICES COMPANY AND BEEMAN INVESTMENT COMPANY DEFENDANTS

FINAL DECREE OF CONFIRMATION OF TITLE

This cause having come on for hearing in open Court upon the amended complaint of Deweese Nelson Realty, Inc. against the defendants, Equity Services Company and Beeman Investment Company, and upon the counterclaim of Beeman Investment Company to confirm tax titles and quiet title in the real estate described herein, the parties being present in Court in person and through counsel, they having announced ready for trial, whereupon evidence and testimony, both oral and documentary, were presented, and the Court

having heard and considered same, along with the proposed findings of fact and conclusions of law of the parties, and being fully advised in the premises, having rendered its written Opinion dated July 25, 1984, which Opinion of the Court is incorporated herein by reference as the Court's findings of fact and conclusions of law, the Court is of the opinion that the amended complaint of the plaintiff should be dismissed and that the counterclaim of Beeman Investment Company should be granted as set forth in this Final Decree. Further, on the application of Beeman Investment Company for a default judgment against all persons having or claiming any legal or equitable interest in the property described in this final decree, and said defendants to the counterclaim of Beeman Investment

Company having been summoned by publication as required by law, in the manner and for the time required by law, and said defendants having taken no proceeding since the default was entered, this Court is of the opinion that Beeman Investment Company is entitled to a judgment against all persons claiming any legal or equitable interest in the property as prayed for in the counterclaim.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

1. Beeman Investment Company is the owner in fee simple of the following described land and property situated in the City of Jackson, First Judicial District of Hinds County, Mississippi, described as follows, to-wit:

> Lot 18, Petit Bois, Part 1, a subdivision according to a map or plat thereof which is on

> file and of record in the office of the Chancery Clerk of the First Judicial District of Hinds County, at Jackson, Mississippi.

and that the cross-defendants, (1) Deweese Nelson Realty, Inc. and (2) all persons having or claiming any legal or equitable interest in the hereinafter described land and property sold for (a) unpaid county and state ad valorem taxes on September 15, 1980, by the Tax Collector of Hinds County, Mississippi, for the unpaid county and state ad valorem taxes due thereon for the year 1979, and (b) sold for unpaid city ad valorem taxes on April 7, 1980, by the Tax Collector of the City of Jackson, Mississippi, for the unpaid city ad valorem taxes due thereon for the year 1979; have no right, title, or interest either legal or equitable therein, and the title of said Beeman

Investment Company is hereby confirmed against all of said parties.

2. The amended complaint of Deweese Nelson Realty, Inc. should be and the same hereby is dismissed with prejudice.

3. The Clerk of this Court should be and he hereby is directed to index and record this Final Decree in the Deed Records of the First Judicial District of Hinds County, Mississippi.

4. All costs herein be, and the same hereby are, assessed against Deweese Nelson Realty, Inc.

For all of which let execution issue.

SO ORDERED, ADJUDGED AND DECREED, this the 2nd day of August, 1984.

/s/JOE G. MOSS
Chancellor

APPROVED AS TO FORM:
DEWEESE NELSON REALTY, INC.

By:/s/William P. Featherston, Jr.
William P. Featherston, Jr.
Its Attorney

EQUITY SERVICES COMPANY AND
BEEMAN INVESTMENT COMPANY

By:/s/E. Stephen Williams
E. Stephen Williams
Their Attorney

IN THE SUPREME COURT OF MISSISSIPPI
NO. 55,990

DeWEESE NELSON REALTY, INC.

V.

EQUITY SERVICES CO. & BEEMAN INVESTMENT CO.

BEFORE ROY NOBLE LEE, P. J., DAN LEE AND PRATHER, JJ. PRATHER, J., FOR THE COURT:

This appeal involves a suit by DeWeese Nelson Realty, Inc. to quiet title and set aside certain tax deeds for an undeveloped tract of property in Jackson, Mississippi. From an adverse ruling in the Chancery Court of Hinds County, DeWeese Nelson Realty, Inc. appeals assigning as error:

(1) The taxing authority of the City of Jackson did not comply with their duty to conduct a diligent search and inquiry as required by Miss. Code Ann. §27-43-3 (Supp.1985) to ascertain the address of appellant

for the purpose of informing appellant of its right to redeem the subject property from the City of Jackson tax sale, thereby rendering the city tax sale void.

(2) The chancellor was manifestly in error and abused his discretion by finding that appellant did not make a reasonable effort to redeem the subject property from the county tax sale and by not voiding the county tax deed in allowing appellant to redeem its property.

(3) The chancellor erred by not finding the Mississippi statutes pertaining to sales of land for taxes unconstitutional for allowing a property owner to be deprived of his property without due process of law.

We affirm without reaching the merits of appellant's constitutional claim.

I.

DeWitt "Buddy" DeWeese was President of DeWeese Nelson Realty, Inc., a Mississippi corporation. DeWeese Nelson Realty, Inc. (appellant) acquired fee simple title in 1978 to Lot 18, Petit Bois, Part 1, a portion of an undeveloped subdivision in Jackson, Mississippi.

City and county ad valorem taxes on the property for 1979 went unpaid. The property was sold at a city tax sale on April 7, 1980 and at a county tax sale September 15, 1980. Equity Services Company (Equity) was the buyer at both sales.

The property was never properly redeemed and both tax sales matured in 1982, with Equity holding title. The property was subsequently conveyed from Equity to Beeman Investment Company (Beeman).

In December of 1983, appellant brought suit to quiet title to the property and to have the tax deeds set aside. Having no success in the Chancery Court of Hinds County, appellant perfects this appeal.

II.

Did the taxing authority of the City of Jackson comply with their duty to conduct a diligent search and inquiry as required by Miss. Code Ann. §27-43-3 (Supp.1985)?

When property is sold for unpaid county or municipal ad valorem taxes, the property owner must be given notice of his right to redeem the property within 180 days of, but no less than 60 days prior to, the expiration of the redemption period. Miss. Code Ann. §27-43-1 and §27-43-4 (Supp. 1985).

Both chancery clerks and municipal clerks are required to provide notice in accordance with Miss. Code Ann. §27-43-3 (Supp.1985) which states in part:

> The clerk shall issue the notice to the sheriff of the county of the reputed owner's residence, if he be a resident of the state of Mississippi, and the sheriff shall be required to serve personal notice as summons issued from the courts are served, and make his return to the chancery clerk issuing same. The clerk shall also mail a copy of same to the reputed owner at his usual street address, if same can be ascertained after diligent search and inquiry, or to his post-office address if only that can be ascertained, and he shall note such action on the tax sales record. The clerk shall also be required to publish the name and address of the reputed owner of the property and the legal description of such property in a public newspaper of the county in which the land is located, or if no newspaper is published as such, then in a newspaper having a general circulation in such county. Such publication shall be made at least forty- five (45) days prior to the expiration of the redemption period.

. . .

Notice by mail shall be by registered or certified mail. In the event the notice by mail is returned undelivered and the personal notice as hereinabove required to be served by the sheriff is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post-office address. If the reputed owner's street or post- office address is ascertained after the additional search and inquiry, the clerk shall again issue notice as hereinabove set out. If personal notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the clerk shall file an affidavit to that effect and shall specify therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post- office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sales record. If the clerk is still unable to ascertain the reputed owner's street or post- office address after making search and inquiry for the second time, then it shall not be necessary to issue any additional notice but the clerk shall file an affidavit specifying therein the acts of search and inquiry

> made by him in an effort to ascertain the reputed owner's street and post- office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sale record.

Section 27-43-3 requires redemption notice to be given by personal service, by mail, and by publication in an appropriate newspaper.

The present record reflects that the municipal clerk properly published notice in the Jackson Daily News and that personal service of the redemption notice was performed by Bart Usry, a Hinds County Deputy Sheriff. Appellant's complaint concerns the address to which its redemption notice was mailed.

Appellant's registered agent for service of process was Harriette Lee DeWeese and the mailing address of its registered agent was 507 Holland

Avenue, Philadelphia, Mississippi. Appellant contends the name and address of its registered agent was on file and of record with the office of the Secretary of State.

Appellant's municipal redemption notice letter was mailed to 146 Chippewa Circle, Jackson, Mississippi, the residence of DeWitt DeWeese's former wife. The letter was addressed to DeWeese Nelson, Inc., c/o Buddy DeWeese. Mr. DeWeese testified he had not resided at that address for over 10 years.

In contrast, the Hinds County redemption notice was mailed to the Philadelphia, Mississippi address and was received by the appellant's registered agent. Because the chancery clerk had access to the appellant's corporate address, it is apparent the municipal clerk also had access to

that address. This Court held in Kron v. VanCleave, 339 So.2d 559 (Miss.1976) that landowners have the right to presume information available to one taxing authority may be ascertained by other taxing authorities upon reasonably diligent search and inquiry.

Appellant claims the municipal clerk failed to conduct a "diligent search and inquiry" because the clerk did not mail appellant's notice to the correct corporate address.

Mrs. Bobbie Rester, Assistant City Clerk for the City of Jackson, testified concerning the method employed by the municipal clerk to ascertain mailing addresses:

> Q. How do you ascertain a landowner's or property owner's address to send them the notice?
>
> A. The first thing we do in order to get the list that has not been redeemed is to go

> to the tax office and search from the tax assessor's department to get the property address, then from the downstairs department, the tax collector's office to get the mailing address. That's what you use for the first notice. Now, if they don't have it, then you use telephone directories. You can use county tax collector's addresses, or you hunt in the city directory or call somebody that might know somebody that might know who they are. You just make every effort to try to get an address.
>
> Q. What about for a corporation?
>
> A. Secretary of State's office.

The record does not reflect the origin of the Jackson, Mississippi address used by the municipal clerk. Apparently that address was located before the clerk consulted the county tax collector or the Secretary of State. Notice was then mailed to the Jackson address, Mrs. DeWeese took delivery of it, and the delivery receipt was mailed back to the

municipal clerk. There was no indication to the municipal clerk of any problems concerning the delivery of the notice. Further solidifying the clerk's belief that notice had been properly delivered, the notice served by the sheriff's office bore the same address as the mailed notice.

There is evidence in the present record indicating that DeWitt DeWeese actually received the mailed notice. Mrs. DeWeese, who took delivery of the mailed notice, testified it was her practice, whenever her former husband received mail at her address, to send the mail to Mr. DeWeese via one of their two sons.

Notwithstanding that evidence, the Court looks to Miss. Code Ann. §27-43-3 (Supp.1985) which states in part, "The failure of the landowner to actually receive the notice herein

required shall not render the title void, provided the clerk and sheriff have complied with the duties herein prescribed for them." See, Hart v. Catoe, 390 So.2d 1001 (Miss.1980).

In the present case, the Chancery Court held the municipal clerk was diligent and evidence in record supports that finding by the chancellor. Both the mailed notice and the personal notice bore the Jackson, Mississippi address and neither was returned undelivered. Absent some indication that there was a problem involved, there was nothing to indicate to the clerk that notice had not been delivered. Therefore, the Court holds the municipal clerk was diligent.

II.

Did the chancellor err in finding that appellant made no reasonable effort to redeem the subject property?

In an effort to avoid the county tax sale, appellant has invoked the doctrine of equitable redemption as established by this Court in Osborne v. Harrison, 447 So.2d 122 (Miss.1984) and Levy v. McCay, 445 So.2d 546 (Miss.1984). In Osborne and Levy, tax sales were set aside based on findings that property owners had made "reasonable efforts" to redeem their property before the tax deeds matured. To the contrary, the chancellor in the instant case found that the appellant did not make a reasonable effort to redeem its property.

April 16, 1982, appellant received the county redemption notice stating the property had been sold for 1979 taxes. On May 13, 1982, DeWitt DeWeese tendered a check to the Hinds County Tax Collector for $46.43, the amount of the 1981 county ad valorem

taxes. Mr. DeWeese claims he was attempting to pay all the taxes due on the property. His receipt, however, clearly indicated the amount paid was for taxes due in 1981. Furthermore, Mrs. Francis Doris, the employee who signed DeWeese's receipt, testified that if any mention had been made of a tax sale or a redemption, she would have directed the person to the chancery clerk's office where the tax sale redemptions were handled.

On September 14, 1982, the day before the expiration of the redemption period for the county sale, DeWitt DeWeese visited Hinds County Chancery Clerk Pete McGee, but DeWeese did not redeem the property. Afterward, DeWeese visited B. B. McClendon who represented Equity Services Company, purchasers at the tax sale. At trial, Mr. McClendon testified that

DeWeese told him that Nelson DeWeese Realty would not redeem the property. DeWitt DeWeese denied making any such statement.

Based on the afore-mentioned facts, the chancellor found that "DeWeese did not redeem or make a reasonable effort to redeem either the city or county tax sales made for 1979 ad valorem taxes." Findings of fact made by a chancellor may not be set aside or disturbed on appeal unless manifestly wrong. Smith v. Todd, 464 So.2d 1155, 1157 (Miss.1985); Peoples Bank & Trust Co. v. L & T Developers, 434 So.2d 699, 704 (Miss.1983).

This Court finds the chancellor was not manifestly wrong.

III.

Construing Miss. Code Ann. §27-41-55 (Supp.1985) and Miss. Code Ann. §27-43-3 (Supp.1985) together,

notice must be given by personal service, mail, and publication before a landowner's rights are finally extinguished by the maturing of a tax deed. The evidence in the present record indicates appellant actually received notice by mail and by personal service before it was finally deprived of its property interest.

On those facts, this Court cannot find that appellant was deprived of its property interests without due process of law. Therefore, the Court finds it unnecessary to address the merits of appellants constitutional issue. Marble v. Marble, 457 So.2d 1342, 1343 (Miss.1984); Tribou v. Gunn, 410 So.2d 378, 380 (Miss.1982).

In the interest of refining our law, however, this Court suggests the legislature consider the statutory procedure for notice of tax sales in

light of developing United States Constitutional law on due process. In this case it would be helpful for the legislature to be apprised of Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983).

As this Court has stated before, "[T]he courts interpret statutes and decide the law. The enactment, modification, amendment or repeal of statutes are for the legislature." Contreras v. State, 445 So.2d 543, 545 (Miss.1984).

AFFIRMED.

WALKER, C. J., ROY NOBLE LEE AND HAWKINS, P. JJ., DAN LEE, ROBERTSON, SULLIVAN, ANDERSON AND GRIFFIN, JJ., CONCUR.

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DEWEESE NELSON REALTY, INC. — APPELLANT

VS.

EQUITY SERVICES COMPANY and BEEMAN INVESTMENT COMPANY — APPELLEES

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Deweese Nelson Realty, Inc., the Appellant above named, hereby appeals to the Supreme Court of the United States from the denial of Appellant's Petition for Rehearing by this Court on February 25, 1987, which said denial of rehearing affirms the decision of this Court rendered on October 1, 1986, affirming the decision of the Chancery Court of the First Judicial District of Hinds County.

This appeal is taken pursuant to

28 U.S.C. §1257(2).

This Court ruled that the notice provisions of the Mississippi tax Sales Statutes were not violative of the due process clause of the United States Constitution. Appellant has at all times claimed that the foregoing statutes are unconstitutional as violative of the notice required under due process, as applied to Appellant. The final judgment from which this appeal is taken is in favor of the validity of said statutes.

THIS the 21st day of April, 1987.

/s/William P. Featherston,Jr.
William P. Featherston,Jr.

WILLIAM P. FEATHERSTON, JR.
Attorney at Law
105 North State Street
Jackson, Mississippi 39201
(601) 353-2725

CERTIFICATE

I, WILLIAM P. FEATHERSTON, JR., do hereby certify that I have this day mailed by United States Mail, postage

prepaid, a true and correct copy of the above and foregoing Amended Notice of Appeal to E. Steven Williams, Esquire, 1440 Deposit Guaranty Plaza, Jackson, Mississippi 39201, Attorney for Appellees.

SO CERTIFIED, this the 21st day of April, 1987.

/s/William P. Featherston,Jr.
William P. Featherston,Jr.

VERIFIED PROOF OF SERVICE OF FILING
A PETITION FOR
JURISDICTIONAL STATEMENT

I, WILLIAM P. FEATHERSTON, JR., being first duly sworn upon my oath, allege and say:

1. That I am a member of the Bar of the United States Supreme Court.

2. That on the 20th day of May, 1987, I deposited at the United States Post Office, Jackson, Mississippi, first class postage prepaid and properly addressed to the Clerk of this Court, forty (40) copies of Appellant's Petition for Jurisdictional Statement within the time allowed for filing.

3. That, in addition, I hand delivered three (3) copies of Appellant's Petition for Jurisdictional Statement to E. Stephen Williams, Counsel for the Appellees, at his address, 1440 Deposit Guaranty Plaza, Jackson, Mississippi 39201.

4. That, in addition, I hand delivered three (3) copies of Appellant's Petition for Jurisdictional Statement to Edwin Lloyd Pittman, Attorney General for the State of Mississippi, at his address, Carroll Gartin Justice Building, Jackson, Mississippi.

WILLIAM P. FEATHERSTON, JR.

STATE OF MISSISSIPPI

COUNTY OF HINDS

Subscribed and sworn to before me, this the 20th day of May, 1987.

Peggy C Bickil
NOTARY PUBLIC

My Commission Expires:

Aug. 31, 1987

Supreme Court, U.S.
FILED
JUL 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1875

In The

# Supreme Court of the United States

1987 Term

———o———

DEWEESE NELSON REALTY, INC.,

*Appellant,*

v.

EQUITY SERVICES CO.

and

BEEMAN INVESTMENT CO.,

*Appellees.*

———o———

**On Appeal from the Supreme Court of Mississippi**

———o———

## MOTION TO DISMISS

———o———

E. Stephen Williams
Young, Scanlon & Sessums, P.A.
2000 Deposit Guaranty Plaza
Post Office Box 23059
Jackson, Mississippi 39225-3059
(601) 948-6100

*Counsel of Record for Appellees*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

## QUESTIONS PRESENTED

1. Whether a substantial constitutional question of due process is presented when, construing Mississippi's ad valorem tax sale and redemption notice procedures together (MISS. CODE ANN. § 27-41-55 (Supp. 1985) and MISS. CODE ANN. § 27-43-3 (Supp. 1985)), notice must be given by personal service, registered mail and publication before a landowner's rights are finally extinguished by a maturing tax deed.

2. Whether Appellant's Jurisdictional Statement presents a substantial federal question in light of the fact that the constitutional question was not passed on by the Mississippi court.

3. Whether the decision of the Mississippi Supreme Court is reviewable when it is based upon adequate state grounds.

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No. 86-1875

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In The

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—o—

**On Appeal from the Supreme Court of Mississippi**

—o—

## MOTION TO DISMISS

—o—

Pursuant to Rule 16.1(b) of the Rules of the United States Supreme Court, Appellees respectfully move this Court to dismiss this appeal for the following reasons: (i) lack of a substantial federal question, (ii) the federal question sought to be reviewed was not passed on, and (iii) the judgment rests on an adequate non-federal basis.

## CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Mississippi is officially reported at 502 So. 2d 310 (Miss. 1987). The text of the opinion is contained in the Appendix to Appellant's Jurisdictional Statement beginning at page 20.

———o———

## STATEMENT OF JURISDICTION

Appellees concur in the Statement of Jurisdiction presented by Appellant.

———o———

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Appellees concur in Appellant's enumeration of MISS. CODE ANN. §§ 27-41-55 (Supp. 1985) and 21-33-63 (Supp. 1985) ("ad valorem sale statutes") as statutes involved in this appeal, but adds MISS. CODE ANN. § 27-43-3 (Supp. 1985), which states the requisite redemption notice requirements that Chancery Clerks and Municipal Clerks must provide to the property owner in connection with ad valorem tax sales ("redemption notice statute"). In pertinent part the statute states:

> The Clerk shall issue the notice to the sheriff for the county of the reputed owner's residence, if he be a resident of the state of Mississippi, and *the sheriff shall be required to serve personal notice* as summons issued from the courts are served, and make his return to the Chancery Clerk issuing same. *The Clerk shall also mail a copy* of same to the reputed owner at his usual street address, if same can be ascertained after diligent search and inquiry, or to his post office

address if only that can be ascertained, and he shall note such action on the tax sales record. The *Clerk shall also be required to publish* the name and address of the reputed owner of the property and the legal description of such property in a public newspaper of the county in which the land is located, or if no newspaper is published as such, then a newspaper having a general circulation in such county. Such publication shall be made at least forty-five (45) days prior to the expiration of the redemption period.

. . .

*Notice by mail shall be registered or certified mail.* In the event the notice by mail is returned undelivered and the personal notice as here above required to be served by the sheriff is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post office address.

. . . (emphasis added)

Appellant's statement that the ad valorem sale statutes require only notice by posting and publication is technically correct. However, the ad valorem tax sale procedure must be considered as a complete process which includes the statutory right of redemption, MISS. CODE ANN. § 27-43-3. In Mississippi, the redemption notice statute requires notice to the owner by personal service, registered mail and publication before the owner can be deprived of his property. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983); *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306 (1950); MISS. CODE ANN. § 27-43-3 (Supp. 1985).

In Mississippi, the ad valorem tax sale process involves two factors: the actual sale (with notice by posting and publication) and the owner's statutory right of redemption within two years after the sale (with notice by

personal service, registered mail and publication). A tax sale can not be confirmed until the two year redemption period has expired and the required notices have been given to the owner of the property as required by MISS. CODE ANN. § 27-43-3. *See Nickey v. Mississippi*, 292 U.S. 393 (1933); *Longyear v. Toolan*, 209 U.S. 414 (1907). The redemption notice must be given to the owner within one hundred eighty (180) days, but no less than sixty (60) days prior to the expiration of the two year redemption period. MISS. CODE ANN. § 27-43-1 and § 27-43-4 (Supp. 1985).

## STATEMENT OF THE CASE

The issues in this case relate to the tax sale of an undeveloped lot in a subdivision located in the city of Jackson, Mississippi.

DeWeese Nelson Realty, Incorporated ("DeWeese"), purchased the property on May 30, 1978. The 1978 ad valorem taxes were paid at the time of the sale and were prorated between the seller and DeWeese. City and county ad valorem taxes on the property for 1979 were not paid when due in 1980, nor were the 1980 taxes paid when due in 1981. When the 1979 taxes went unpaid, the property was sold at a city tax sale on April 7, 1980, and again at a separate county tax sale on September 15, 1980.

DeWeese is not a casual purchaser of real estate. In fact, it owns property in several other Mississippi counties. As a sophisticated investor in real estate, it knew that every February 1 the previous year's real estate taxes were due. Not only did DeWeese know when taxes were due, but it also understood the process whereby property was

sold for non-payment of taxes and by which it could be redeemed. DeWeese's president and principal fact witness, Dewitt DeWeese, had previously redeemed property sold at a January 10, 1970, tax sale in Hinds County, Mississippi.

Pursuant to § 27-43-3, the Municipal Clerk mailed to DeWeese a redemption notice pertaining to the city tax sale. The Mississippi Supreme Court found the evidence in the present record to indicate that Dewitt DeWeese actually received the mailed notice. *DeWeese Nelson Realty, Inc. v. Equity Services Co.*, 502 So. 2d 310, 314 (Miss. 1986). The Clerk also properly published notice in an appropriate newspaper. Further, Mr. DeWeese was personally served with a copy of the redemption notice by a Hinds County Deputy Sheriff.

Prior to the maturing of the separate county tax sale, DeWeese received notice from the Hinds County Chancery Clerk. This notice was mailed to DeWeese's registered agent for service of process and was personally served upon DeWeese's agent by the sheriff.

On April 16, 1982, DeWeese paid the 1981 county ad valorem taxes to the Hinds County Tax Collector. Appellant argued in the court below that in making this payment he was attempting to pay all taxes due on the property, and that the doctrine of equitable redemption should be invoked to avoid the county tax sale. The Mississippi Supreme Court completely rejected this argument citing the fact that DeWeese knew that the 1979 taxes had not been paid, and that his receipt for the 1981 taxes clearly indicated that he had paid only the 1981 taxes. Further, the court found that DeWeese, in tendering payment for

the 1981 taxes, made no mention of the county tax sale or the redemption notice. *Id.* at 313-14. Had he done so, he would have been directed to the personnel in the Chancery Clerk's office who process such redemptions.

On the day prior to the maturing of the county tax sale, DeWeese again visited the office of the Chancery Clerk, but did not redeem the property. Thereafter, DeWeese visited the office of Mr. B. B. McClendon, attorney for Equity Services Company, purchaser at the tax sale, and indicated to him that he would not redeem the property.

DeWeese made no equitable redemption argument with respect to the city tax sale. Based on the record before it, the Mississippi Supreme Court concluded that DeWeese received actual notice of both sales and of its right of redemption before forfeiting its interest in the property. *Id.* at 314.

———o———

## THE QUESTIONS PRESENTED BY APPELLANT ARE NOT SUBSTANTIAL

**I. The question presented by the Appellant is not substantial in that the Mississippi Supreme Court held that DeWeese actually received notice by mail and by personal service in accordance with MISS. CODE ANN. §§ 27-41-55 and 27-43-3 (Supp. 1985).**

This Court has frequently held that constitutional issues should not be passed upon lightly when the issues may be properly disposed of through other means. *Rescue Army v. Municipal Court*, 331 U.S. 566 (1946). To imple-

ment this policy, the court has adopted rules under which it has avoided passing upon all the constitutional issues pressed upon it for decision. Following these rules, the court has not passed on constitutional issues: in broader terms than the facts to which the ruling is to be applied; in advance of a necessity of deciding them; at the urging of one who fails to show that he was injured by the statute's operation; or if the question may be avoided by a fair construction of the statute. *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288 (1935) (Brandeis, J., dissenting). The Mississippi Supreme Court followed this reasoning in concluding that it was unnecessary to a decision in this case to reach the Appellant's constitutional claim.

It is essential to this Court's acceptance of jurisdiction over a state court decision, alleged to be reviewable on "federal question grounds", that the state court actually decide a federal question. *Herb v. Pitcairn,* 324 U.S. 117 (1945); *Durley v. Mayo,* 351 U.S. 277 (1956). This the Mississippi Supreme Court did not do. In fact, the court specifically stated that it was unnecessary to consider the constitutional issue:

> Construing MISS. CODE ANN. § 27-41-55 (Supp. 1985) and MISS. CODE ANN. § 27-43-3 (Supp. 1985) together, *notice must be given by personal service, mail, and publication before a landowner's rights are finally extinguished by the maturing of a tax deed. The evidence in the present record indicates appellant actually received notice by mail and by personal service before it was finally deprived of its property interest.*
>
> On those facts, this Court cannot find that Appellant was deprived of its property interests without due process of law. Therefore, the Court finds it unnecessary to address the merits of Appellant's constitu-

> tional issue. *Marble v. Marble*, 457 So. 2d 1342, 1343 (Miss. 1984); *Tribou v. Gunn*, 410 So. 2d 378, 380 (Miss. 1982). (emphasis added)

*DeWeese Nelson Realty, Inc. v. Equity Services Co.*, 502 So. 2d 310, 314 (Miss. 1987).

The mere discussion of a federal question is insufficient to grant jurisdiction, since the Supreme Court reviews judgments of state courts, and not isolated statements in their opinions. *Black v. Cutter Laboratories*, 351 U.S. 292 (1956).

In concluding that DeWeese actually received notice of the tax sale under the redemption notice statute, the Mississippi Supreme Court construed state statutory law. To invoke jurisdiction of this Court, Appellant does not contend that the Mississippi Supreme Court was wrong in its state law interpretation. Instead, DeWeese contends that the constitutional challenge must necessarily be addressed even though it had notice and opportunity to prevent the termination of its property interest.

Since this court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights" *Herb v. Pitcairn, supra* P.9, at 125-26, the Court should accept the Mississippi Supreme Court's determination that it was unnecessary to reach the constitutional issue. In fact, the questions now presented by DeWeese are so insubstantial as to warrant no further review.

**II. The Court should decline to note probable jurisdiction because the decision below rests on adequate and independent state grounds.**

The court below did not base its opinion on federal law. The court expressly stated that the requisite notice,

both by personal service and registered mail, was given to DeWeese under applicable state statutory law, and it was therefore unnecessary to consider the constitutional issue.

Where a state court judgment rests upon two grounds, one federal and the other non-federal, this Court must refuse to note jurisdiction where the non-federal ground is independent of the federal ground and is adequate to support the judgment of the state court. *Fox Film Corporation v. Muller*, 296 U.S. 207, 210 (1935). In the case at hand, the decision of the Mississippi Supreme Court rests on such an independent and adequate state ground. The court below held that the state statutes involved provided the Appellant with adequate notice prior to termination of its property interest.

In *Michigan v. Long*, 463 U.S. 1032, 1041 (1982), it was stated that "if the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we of course, will not undertake to review the decision." The Mississippi court clearly expressed its intention to base its decision on grounds independent of federal questions.

The non-federal grounds upon which this case was decided are adequate grounds for the state court judgment. The decision below is based on the Mississippi Supreme Court's interpretation of the adequacy of the ad valorem sale statutes and the redemption notice statute as applied to DeWeese. It is the province of a state's highest court to develop its law in accordance with its needs, so long as it is cognizant of and does not attempt to evade a federal constitutional requirement. *See Minnesota v. National Tea Company*, 309 U.S. 551 (1940).

Where the non-federal ground of a state court's decision has adequate support, this Court should not inquire as to whether the rules of law applied by the state court are right or substitute its own view of what should be the better view. *See Demorest v. City Bank Farmers Trust Company,* 321 U.S. 36 (1944). *See generally Long, supra* P.12, at 1039.

Even assuming for present purposes that a federal question is involved, the case is still controlled by the settled rule that jurisdiction fails if the non-federal ground is independent and adequate to support the judgment. This principle is illustrated in the case of *Enterprise Irrigation District v. Farmers Mutual Canal Company,* 243 U.S. 157 (1917). There the Court dismissed for lack of jurisdiction a writ of error which sought to review a judgment of the Nebraska Supreme Court permitting a coal company to divert water from a river.

The appellants contended that the hearing before the Board of Irrigation had denied them due process by failing to provide notice. After determining that one of the issues resolved by the state court was whether the appellants had been denied due process and equal protection, the Court considered whether the defense of estoppel was adequate to support the judgment. The Supreme Court held that it could not be said "that the ruling upon the question of estoppel was without fair support, or so unfounded as to be essentially arbitrary, or merely a device to prevent a review of the other grounds of the judgment". *Id.* at 165. The Court therefore concluded that it was not at liberty to inquire as to whether the ruling was right or wrong.

The circumstances in this case do not give rise to an inference that the state court has interpreted state law

with intent to deprive DeWeese of a federal right. On the contrary, the court went to great lengths to determine whether adequate notice had in fact been given to DeWeese prior to termination of its property interest. In concluding that adequate notice and opportunity to protect its property rights were in fact actually received, the court scrutinized both the municipal and county tax sales. Only then were the tax sales found to have complied with the statutory requirements.

Further, the state law as applied does not cast impediments in the path of enforcement of constitutional rights. Nor does it interfere with the vindication of these rights. Had DeWeese not received notice by mail, personal service, and publication, the court certainly could have determined whether a constitutional right to notice had been violated.

In light of the Mississippi Supreme Court's determination that it was unnecessary to address the merits of DeWeese's constitutional issue, this Court should decline further review on the basis of the judgment's adequate and independent state grounds.

## CONCLUSION

Due process requires "notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306, 314 (1950). In its jurisdictional statement, the Appellant fails to frame its

question in light of all circumstances of the Mississippi ad valorem tax sale and redemption notice statutes. There is no substantial constitutional question of due process where Mississippi's ad valorem tax sale procedures require notice by personal service, registered mail and publication before a landowner's rights are finally extinguished.

Additionally, the constitutional question was properly pretermitted by the Mississippi court, since it found as a matter of fact that Appellant received notice by personal service and registered mail in two separate tax sales on the same property and still failed to exercise its statutory right of redemption. Under these circumstances, the issues in this case were properly decided by the Mississippi court and no federal question exists for review.

Mississippi has a vital interest in the collection of its tax revenues by whatever reasonable method it deems appropriate. Mississippi has adopted a tax assessment, sale and redemption procedure which accommodates its revenue raising interest in a constitutionally permissible manner. In the absence of any constitutional or substantial federal question, the Appellant's attempted appeal should be dismissed.

Respectfully submitted,

EQUITY SERVICE CO. AND
BEEMAN INVESTMENT CO.,
Appellees

E. Stephen Williams
Young, Scanlon & Sessums, PA.
2000 Deposit Guaranty Plaza
P. O. Box 23059
Jackson, MS 39225-3059
(601) 948-6100
*Counsel of Record for Appellees*